

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,

Plaintiff,

-v-

BY KIY LLC, et al.,

Defendants.

CIVIL ACTION NO.: 23 Civ. 2431 (VM) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

Before the Court is the motion of attorneys John Durrant and Zakari Kurtz to withdraw as counsel for Defendants By Kiy LLC (“By Kiy”) and Nickwon Arvinger (“Mr. Arvinger”), following their prior withdrawal as counsel for Defendant David Weeks (“Mr. Weeks,” together with By Kiy and Mr. Arvinger, “Defendants”). (ECF Nos. 115; 133 (together, the “Motion”); see ECF No. 104 (order permitting substitution of counsel for Mr. Weeks)). Mr. Durrant and Mr. Kurtz seek leave to withdraw as counsel due to alleged conflicts of interest and other ethical concerns. (ECF Nos. 155; 133).¹ Plaintiff Nike, Inc. (“Nike”) does not oppose the Motion, but requests that the Court (1) order that Defendants not be permitted to use counsel’s withdrawal as a basis to materially alter the case schedule, (2) order Mr. Durrant and Mr. Kurtz to preserve their case files after withdrawal, and (3) retain jurisdiction over Mr. Durrant and Mr. Kurtz to impose discipline. (ECF No. 140). Mr. Durrant and Mr. Kurtz submitted a further reply. (ECF Nos. 152–53).

¹ Due to the nature of the conflict, the Court permitted declarations and exhibits supporting the Motion, which contain attorney-client privileged and other confidential information, to be filed under seal. (ECF Nos. 117; 137; 143; 154).

The Court finds that Mr. Durrant and Mr. Kurtz have sufficiently demonstrated that there are conflicts of interest and ethical concerns preventing their continued representation of Defendants in this action. Further, the Defendants have retained replacement counsel: Mr. Weeks by Matthew Jacobs (ECF No. 102), and By Kiy and Mr. Arvinger by Nicholas Calabria and Daniel Lust (ECF Nos. 141; 144). Accordingly, the Motion is GRANTED.

Nike's requests are DENIED. The Court has scheduled a conference for August 29, 2023 to discuss the remainder of the pre-trial schedule (ECF No. 147), and will address Nike's concerns about possible delay at that time. In addition, the Court need not order Mr. Durrant and Mr. Kurtz to preserve their case files, as they are ethically required to do so and have agreed in writing to do so. (ECF Nos. 152 at 3; 153 ¶ 2). The Court also declines to "retain jurisdiction" over Mr. Durrant and Mr. Kurtz to "impose discipline"—a request for which Nike provides neither any legal nor evidentiary support. (ECF No. 140 at 2, 4, 6).

The Clerk of Court is respectfully directed to terminate Mr. Durrant and Mr. Kurtz as counsel, and to close ECF Nos. 115 and 133.

Dated: New York, New York
August 22, 2023

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge